
HOUSE BILL 1947

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By Representatives G. Chandler, Hatfield, B. Chandler, Doumit,
Mulliken, Clements, Grant and Sump

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& Housing.

1 AN ACT Relating to application and review of shoreline master
2 program guidelines adopted after November 1, 2000; amending RCW
3 90.58.030; adding a new section to chapter 90.58 RCW; creating a new
4 section; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read
7 as follows:

8 As used in this chapter, unless the context otherwise requires, the
9 following definitions and concepts apply:

10 (1) Administration:

11 (a) "Department" means the department of ecology;

12 (b) "Director" means the director of the department of ecology;

13 (c) "Local government" means any county, incorporated city, or town
14 which contains within its boundaries any lands or waters subject to
15 this chapter;

16 (d) "Person" means an individual, partnership, corporation,
17 association, organization, cooperative, public or municipal
18 corporation, or agency of the state or local governmental unit however
19 designated;

1 (e) "Hearing board" means the shoreline hearings board established
2 by this chapter.

3 (2) Geographical:

4 (a) "Extreme low tide" means the lowest line on the land reached by
5 a receding tide;

6 (b) "Ordinary high water mark" on all lakes, streams, and tidal
7 water is that mark that will be found by examining the bed and banks
8 and ascertaining where the presence and action of waters are so common
9 and usual, and so long continued in all ordinary years, as to mark upon
10 the soil a character distinct from that of the abutting upland, in
11 respect to vegetation as that condition exists on June 1, 1971, as it
12 may naturally change thereafter, or as it may change thereafter in
13 accordance with permits issued by a local government or the department:
14 PROVIDED, That in any area where the ordinary high water mark cannot be
15 found, the ordinary high water mark adjoining salt water shall be the
16 line of mean higher high tide and the ordinary high water mark
17 adjoining fresh water shall be the line of mean high water;

18 (c) "Shorelines of the state" are the total of all "shorelines" and
19 "shorelines of statewide significance" within the state;

20 (d) "Shorelines" means all of the water areas of the state,
21 including reservoirs, and their associated shorelands, together with
22 the lands underlying them; except (i) shorelines of statewide
23 significance; (ii) shorelines on segments of streams upstream of a
24 point where the mean annual flow is twenty cubic feet per second or
25 less and the wetlands associated with such upstream segments; and (iii)
26 shorelines on lakes less than twenty acres in size and wetlands
27 associated with such small lakes;

28 (e) "Shorelines of statewide significance" means the following
29 shorelines of the state:

30 (i) The area between the ordinary high water mark and the western
31 boundary of the state from Cape Disappointment on the south to Cape
32 Flattery on the north, including harbors, bays, estuaries, and inlets;

33 (ii) Those areas of Puget Sound and adjacent salt waters and the
34 Strait of Juan de Fuca between the ordinary high water mark and the
35 line of extreme low tide as follows:

36 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

37 (B) Birch Bay--from Point Whitehorn to Birch Point,

38 (C) Hood Canal--from Tala Point to Foulweather Bluff,

1 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
2 and

3 (E) Padilla Bay--from March Point to William Point;

4 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
5 adjacent salt waters north to the Canadian line and lying seaward from
6 the line of extreme low tide;

7 (iv) Those lakes, whether natural, artificial, or a combination
8 thereof, with a surface acreage of one thousand acres or more measured
9 at the ordinary high water mark;

10 (v) Those natural rivers or segments thereof as follows:

11 (A) Any west of the crest of the Cascade range downstream of a
12 point where the mean annual flow is measured at one thousand cubic feet
13 per second or more,

14 (B) Any east of the crest of the Cascade range downstream of a
15 point where the annual flow is measured at two hundred cubic feet per
16 second or more, or those portions of rivers east of the crest of the
17 Cascade range downstream from the first three hundred square miles of
18 drainage area, whichever is longer;

19 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
20 this subsection (2)(e);

21 (f) "Shorelands" or "shoreland areas" means those lands extending
22 landward for two hundred feet in all directions as measured on a
23 horizontal plane from the ordinary high water mark; floodways and
24 contiguous floodplain areas landward two hundred feet from such
25 floodways; and all wetlands and river deltas associated with the
26 streams, lakes, and tidal waters which are subject to the provisions of
27 this chapter; the same to be designated as to location by the
28 department of ecology. Any county or city may determine that portion
29 of a one-hundred-year-flood plain to be included in its master program
30 as long as such portion includes, as a minimum, the floodway and the
31 adjacent land extending landward two hundred feet therefrom;

32 (g) "Floodway" means those portions of the area of a river valley
33 lying streamward from the outer limits of a watercourse upon which
34 flood waters are carried during periods of flooding that occur with
35 reasonable regularity, although not necessarily annually, said floodway
36 being identified, under normal condition, by changes in surface soil
37 conditions or changes in types or quality of vegetative ground cover
38 condition. The floodway shall not include those lands that can
39 reasonably be expected to be protected from flood waters by flood

1 control devices maintained by or maintained under license from the
2 federal government, the state, or a political subdivision of the state;

3 (h) "Wetlands" means areas that are inundated or saturated by
4 surface water or ground water at a frequency and duration sufficient to
5 support, and that under normal circumstances do support, a prevalence
6 of vegetation typically adapted for life in saturated soil conditions.
7 Wetlands generally include swamps, marshes, bogs, and similar areas.
8 Wetlands do not include those artificial wetlands intentionally created
9 from nonwetland sites, including, but not limited to, irrigation and
10 drainage ditches, grass-lined swales, canals, detention facilities,
11 wastewater treatment facilities, farm ponds, and landscape amenities,
12 or those wetlands created after July 1, 1990, that were unintentionally
13 created as a result of the construction of a road, street, or highway.
14 Wetlands may include those artificial wetlands intentionally created
15 from nonwetland areas to mitigate the conversion of wetlands.

16 (3) Procedural terms:

17 (a) "Agricultural practices" means agricultural uses and activities
18 including, but not limited to: Producing, breeding, or increasing
19 agricultural products; rotating and changing agricultural crops;
20 allowing land used for agricultural activities to lie fallow for
21 agricultural or conservation purposes; conducting agricultural
22 operations; maintaining, repairing, and replacing agricultural
23 equipment and facilities; and maintaining agricultural lands under
24 production or cultivation. As used in this subsection (3)(a):

25 (i) "Agricultural products" includes but is not limited to
26 horticultural, viticultural, floricultural, vegetable, fruit, berry,
27 grain, hay, straw, turf, sod, seed, and apiary products; feed or forage
28 for livestock; Christmas trees; hybrid cottonwood and similar hardwood
29 trees grown as crops and harvested in within twenty years of planting;
30 and livestock including both the animals themselves and animal products
31 including but not limited to meat, poultry and poultry products, and
32 dairy products.

33 (ii) "Agricultural equipment and facilities" includes, but is not
34 limited to: (A) The following used in agricultural operations:
35 Equipment; machinery; constructed shelters, buildings, and ponds; water
36 diversion, withdrawal, conveyance, and use equipment and facilities
37 including but not limited to pumps, pipes, tapes, canals, ditches, and
38 drains; (B) corridors and facilities for transporting personnel,
39 livestock, and equipment to, from, and within agricultural lands; (C)

1 farm residences and associated equipment, lands, and facilities; and
2 (D) roadside stands and on-farm markets for marketing fruit or
3 vegetables.

4 (b) "Guidelines" means those standards adopted to implement the
5 policy of this chapter for regulation of use of the shorelines of the
6 state prior to adoption of master programs. Such standards shall also
7 provide criteria to local governments and the department in developing
8 master programs;

9 ~~((b))~~ (c) "Master program" shall mean the comprehensive use plan
10 for a described area, and the use regulations together with maps,
11 diagrams, charts, or other descriptive material and text, a statement
12 of desired goals, and standards developed in accordance with the
13 policies enunciated in RCW 90.58.020;

14 ~~((e))~~ (d) "State master program" is the cumulative total of all
15 master programs approved or adopted by the department of ecology;

16 ~~((d))~~ (e) "Development" means a use consisting of the
17 construction or exterior alteration of structures; dredging; drilling;
18 dumping; filling; removal of any sand, gravel, or minerals;
19 bulkheading; driving of piling; placing of obstructions; or any project
20 of a permanent or temporary nature which interferes with the normal
21 public use of the surface of the waters overlying lands subject to this
22 chapter at any state of water level;

23 ~~((e))~~ (f) "Substantial development" shall mean any development of
24 which the total cost or fair market value exceeds two thousand five
25 hundred dollars, or any development which materially interferes with
26 the normal public use of the water or shorelines of the state; except
27 that the following shall not be considered substantial developments for
28 the purpose of this chapter:

29 (i) Normal maintenance or repair of existing structures or
30 developments, including damage by accident, fire, or elements;

31 (ii) Construction of the normal protective bulkhead common to
32 single family residences;

33 (iii) Emergency construction necessary to protect property from
34 damage by the elements;

35 (iv) Construction and practices normal or necessary for farming,
36 irrigation, and ranching activities, including agricultural service
37 roads and utilities on shorelands, and the construction and maintenance
38 of irrigation structures including but not limited to head gates,
39 pumping facilities, and irrigation channels. A feedlot of any size,

1 all processing plants, other activities of a commercial nature,
2 alteration of the contour of the shorelands by leveling or filling
3 other than that which results from normal cultivation, shall not be
4 considered normal or necessary farming or ranching activities. A
5 feedlot shall be an enclosure or facility used or capable of being used
6 for feeding livestock hay, grain, silage, or other livestock feed, but
7 shall not include land for growing crops or vegetation for livestock
8 feeding and/or grazing, nor shall it include normal livestock wintering
9 operations;

10 (v) Construction or modification of navigational aids such as
11 channel markers and anchor buoys;

12 (vi) Construction on shorelands by an owner, lessee, or contract
13 purchaser of a single family residence for his or her own use or for
14 the use of his or her family, which residence does not exceed a height
15 of thirty-five feet above average grade level and which meets all
16 requirements of the state agency or local government having
17 jurisdiction thereof, other than requirements imposed pursuant to this
18 chapter;

19 (vii) Construction of a dock, including a community dock, designed
20 for pleasure craft only, for the private noncommercial use of the
21 owner, lessee, or contract purchaser of single and multiple family
22 residences. This exception applies if either: (A) In salt waters, the
23 fair market value of the dock does not exceed two thousand five hundred
24 dollars; or (B) in fresh waters, the fair market value of the dock does
25 not exceed ten thousand dollars, but if subsequent construction having
26 a fair market value exceeding two thousand five hundred dollars occurs
27 within five years of completion of the prior construction, the
28 subsequent construction shall be considered a substantial development
29 for the purpose of this chapter;

30 (viii) Operation, maintenance, or construction of canals,
31 waterways, drains, reservoirs, or other facilities that now exist or
32 are hereafter created or developed as a part of an irrigation system
33 for the primary purpose of making use of system waters, including
34 return flow and artificially stored ground water for the irrigation of
35 lands;

36 (ix) The marking of property lines or corners on state owned lands,
37 when such marking does not significantly interfere with normal public
38 use of the surface of the water;

1 (x) Operation and maintenance of any system of dikes, ditches,
2 drains, or other facilities existing on September 8, 1975, which were
3 created, developed, or utilized primarily as a part of an agricultural
4 drainage or diking system;

5 (xi) Site exploration and investigation activities that are
6 prerequisite to preparation of an application for development
7 authorization under this chapter, if:

8 (A) The activity does not interfere with the normal public use of
9 the surface waters;

10 (B) The activity will have no significant adverse impact on the
11 environment including, but not limited to, fish, wildlife, fish or
12 wildlife habitat, water quality, and aesthetic values;

13 (C) The activity does not involve the installation of a structure,
14 and upon completion of the activity the vegetation and land
15 configuration of the site are restored to conditions existing before
16 the activity;

17 (D) A private entity seeking development authorization under this
18 section first posts a performance bond or provides other evidence of
19 financial responsibility to the local jurisdiction to ensure that the
20 site is restored to preexisting conditions; and

21 (E) The activity is not subject to the permit requirements of RCW
22 90.58.550;

23 (xii) The process of removing or controlling an aquatic noxious
24 weed, as defined in RCW 17.26.020, through the use of an herbicide or
25 other treatment methods applicable to weed control that are recommended
26 by a final environmental impact statement published by the department
27 of agriculture or the department jointly with other state agencies
28 under chapter 43.21C RCW.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.58 RCW
30 to read as follows:

31 (1) The guidelines adopted by the department and master programs
32 developed or amended by local governments according to RCW 90.58.080
33 shall not address new agricultural development that meets the
34 definition of agricultural practices specified in RCW 90.58.030 unless
35 the provisions of the guidelines relating to agricultural practices are
36 reviewed and approved by the legislature.

1 (2) The guidelines and master programs shall not apply
2 retroactively to agricultural practices as defined in RCW 90.58.030
3 existing prior to the adoption of the guidelines.

4 NEW SECTION. **Sec. 3.** This act applies to all guidelines adopted
5 by the department of ecology after November 1, 2000.

6 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 immediately.

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